

1984 S.C. Op. Att'y. Gen. 26 (S.C.A.G.), 1984 S.C. Op. Att'y. Gen. No. 84-7, 1984 WL 159816

Office of the Attorney General

State of South Carolina

Opinion No. 84-7

January 24, 1984

*1 The Honorable Frances Q. Holmes
Treasurer of Edgefield County
Post Office Box 22
Edgefield, South Carolina 29824

Dear Ms. Holmes:

Attorney General Medlock has referred your letter of December 1, 1983 to me for response. By your letter, you advised that you plan to retire from the office of Edgefield County Treasurer on June 30, 1984. Three years will then remain in your term of office. You have asked the advice of this Office concerning the holding of a primary for this office concurrent with the regularly scheduled primary elections next year.

There are several statutes which appear to apply to filling a vacancy occurring in the office of county treasurer. Two statutes are general in nature and would provide for appointment of a successor by the Governor and then election in the next general election for a successor to complete the unexpired term.¹ Two statutes refer more specifically to filling a vacancy in the office of county treasurer. [Section 12-45-20, Code of Laws of South Carolina \(1976\)](#) states in part: 'When any treasurer for any reason fails to complete his term of office, his successor shall be appointed initially for the unexpired portion of the term for which his predecessor was appointed.' Further, [Section 1-3-210 of the Code](#) states:
Any vacancies which may happen in any of the following offices during the recess of the Senate may be filled by the Governor, who shall report the appointment to the Senate at its next session:

(2) County treasurers [.]

If the Senate does not advise and consent thereto at such next session, the office shall be vacant.

It is a well-settled rule of law that where one statute deals with a subject in general terms and another statute deals with the same subject in more detailed terms, the two statutes must be harmonized where possible; and if the statutes may not be harmonized, the specific statute must prevail. 2A [Sutherland Statutory Construction](#) § 51.05. See also [Culbreth v. Prudence Life Insurance Company](#), 241 S.C. 46, 127 S.E. 2d 132 (1962) and [Criterion Insurance Company v. Hoffmann](#), 258 S.C. 282, 188 S.E. 2d 459 (1972). Thus, [Sections 12-45-20](#) and [1-3-210](#) would appear to prevail over the general statutes, and the Governor would thus appoint your successor to complete the unexpired portion of your term.

It may be argued that where two statutes appear to conflict, the most recently enacted statute will prevail, as it is the most recent expression of the legislative will. See Opinion No. 1171, August 8, 1961, and cases cited therein. [Section 1-3-210 of](#)

the Code, as it refers to county treasurers, was first enacted in 1868. See, Sections 145 and 146 of Act No. 22 of 1868. [Section 4-11-20 of the Code](#) was first found as Section 161 of the General Statutes of 1882. [Section 12-45-20 of the Code](#) would be the most recent legislative enactment, the provisions for the length of the term of the county treasurer's appointed successor having been enacted as a portion of Act No. 113, 1955 Acts and Joint Resolutions. Thus, [Section 12-45-20](#) would appear to be the controlling statute; when read with [Section 1-3-210 of the Code](#), appointment of your successor by the Governor to serve for the unexpired portion of your term would be appropriate. It is therefore not necessary to address the question of holding a special election to fill the vacancy created by your retirement.

*2 This opinion is consistent with several previous Opinions issued by this Office, copies of which are attached for your convenience. See, Opinion dated May 2, 1979, with attachments; and Opinion No. 2680, dated May 29, 1969. No distinction has been made between an elected treasurer and one who is originally appointed pursuant to [Section 12-45-10 of the Code](#). It is noted in several of these previous Opinions that which statute is applicable is not free from doubt, and I would reiterate that position in your situation.² As is suggested in the Opinion of March 17, 1978 (attached to the Opinion of May 2, 1979), this is clearly an area of uncertainty which might best be resolved by a declaratory judgment action in the courts of this State.

This Office issued an Opinion dated November 26, 1975, concerning filling a vacancy in the office of the Edgefield County Auditor. The offices of treasurer and auditor were created by the same legislation. See, Acts No. 1008 and 1317, 1968 Acts and Joint Resolutions. The conclusion reached in that Opinion was that the auditor's successor would be appointed by the Governor until the vacancy could be filled in the next general election. While ostensibly that Opinion should apply in this situation, it would be distinguishable because [Section 1-3-210\(1\)](#) was not considered. Other Opinions which have considered the same issue have concluded that the Governor would appoint a successor for the county auditor. See, Opinion dated July 20, 1976, a copy of which is attached. Thus, the Opinion dated November 26, 1975, would not be applicable in your situation.

I trust that this letter and the enclosures will sufficiently respond to your inquiry. If you need further clarification, please contact me at 768-3970.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

1 [Section 4-11-20, Code of Laws of South Carolina \(1976\)](#), states in pertinent part:

In the event of a vacancy at any time in any of the offices of any county of the State the Governor may appoint some suitable person who shall be an elector of the county, and, upon duly qualifying according to law, he shall be entitled to enter upon and hold the office to which he has been appointed:

(1) If it be an elective office, until the next general election for such office if the term of such office be fixed by the State Constitution or until the next general election if the term be not so fixed, in which latter case an election shall then be held to fill the unexpired term and in either such event such person shall hold office until his successor shall qualify[.] * * *

Any officer so appointed shall be subject to all the duties and liabilities incident to his office during the term of his service therein. Any officer elected to fill an unexpired term under the provisions of this section shall hold office for such term and until his successor shall qualify.

Section 1-3-220 of the Code states in pertinent part:

The following officers shall be appointed by the Governor in addition to those for whose appointment by the Governor provision is elsewhere made in this Code:

(2) An officer to fill any vacancy in a county office. The person so appointed shall hold office, in all cases in which the office is elective, until the next general election and until his successor shall qualify; and in the case of offices originally filled by appointment and not by election, until the adjournment of the session of the General Assembly next after such vacancy has occurred. The Governor may remove for cause any person so appointed by him under the provisions of this paragraph to fill any such vacancy. * * *

Because Sections 1–3–210 and [12–45–20](#) make provisions for appointment to fill a vacancy in the county treasurer's office, Section 1–3–220(2) would not apply.

- 2 These statutes, which appear to conflict, have been codified in the same forms (relative to county treasurers) in both the 1962 and 1976 Codes of Laws of South Carolina. Furthermore, several legislative sessions have been held since the first formal opinion was issued in 1969, providing the legislature with ample opportunities to correct the seeming conflict. The absence of any amendments to these statutes following the issuance of these several formal and informal opinions strongly suggests that the views expressed by the Attorney General were consistent with legislative intent and thus should be followed. See, [Scheff v. Township of Maple Shade](#), 149 N.J. Super. 448, 374 A.2d 43 (1977).

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